

ARIZONA BOARD OF OSTEOPATHIC EXAMINERS
IN MEDICINE AND SURGERY

In the Matter of:)	Board Case No. 2471
)	
ROBERT MICHAUD, D.O.)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW AND
Holder of License No. 2045 for the)	BOARD ORDER
Practice of Osteopathic Medicine and)	
Surgery in the State of Arizona.)	
_____)	

INTRODUCTION

This matter came before the Board of Osteopathic Examiners in Medicine and Surgery (hereafter "Board") for final consideration and decision at the Board's public meeting held on June 19, 1999. Pursuant to its statutory authority at A.R.S. § 32-1855(E), the Board held an Informal Interview on June 19, 1999. During the course of these proceedings, Robert Michaud, D.O. (hereinafter "Respondent") was present and represented by legal counsel, Kraig Marton.

Based upon Respondent's testimony and documentary evidence submitted to the Board, the board issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent is the holder of License No. 2045 authorizing him to engage in the practice of osteopathic medicine in the State of Arizona.

2. On June 26, 1998 the Board open Complaint No. 2471 based upon receiving a Findings of Fact, Conclusions of Law and Recommended Order, Case No. DOPL-96-245, that as adopted by the State of Utah Division of Occupational and Professional Licensing on January 23, 1998. The Findings of Fact stated the following that resulted in a two-year probationary period subject to restrictions, monitoring and continuing education requirements.

- a. Respondent periodically sold Rogaine, a prescription drug, to various patients between 1992 through 1995. Respondent obtained such prescriptive medication in the form of free samples from an Upjohn drug representative. Many of those samples were labeled as not being for resale.
- b. Respondent periodically sold Cleocin T, a prescription drug, to certain patients during February 1995. He obtained that prescriptive medication from drug wholesalers. Respondent also periodically sold Retin-A, a prescriptive drug, to certain patients during February 1995. He obtained that prescriptive medication from Mexico.

- c. Respondent periodically sold certain over the counter medications to patients during February 1995. Based on the substantial and credible evidence presented, Respondent subsequently ceased that practice when it became too time-consuming and he decided it was no longer cost effective.
- d. Respondent periodically returned excess cortisone solution to source vials after he administered injections to various patients between 1992 through 1995. Respondent returned the unused medication to avoid the need to subsequently remix the solution for later use at the given concentration. Respondent occasionally directed his medical assistants to also return excess cortisone solution to the source vials.
- e. During various surgical procedures that he conducted between 1992 through 1995, Respondent used a single syringe filled with epinephrine and xylocaine for multiple patients. Respondent did use a separate needle for each injection on every patient. However, the Board finds that – based on the more credible testimony of Respondent's medical assistants – he often aspirated those injections and thus could have contaminated the medication with a given patient's blood prior to returning the unused portion of the medication to the source vial. Respondent periodically instructed his medical assistants to also retain such excess medication for subsequent use.
- f. During various surgical procedures which he conducted between 1992 through 1995, Respondent reused excess suture material which had been pulled through the tissue of a previous patient. Respondent purportedly sterilized the unused excess suture material in an autoclave prior to its subsequent use on other patients. However, sterilization is never sufficient as to reuse suture material which has been removed from its original package and initially used for a given patient.
- g. Respondent prescribed adult doses of Chloral Hydrate and Valium to I.H., a four-year-old patient, on January 13, 1995. Respondent also prescribed adult doses of Chloral Hydrate and Valium to J.A.J., a six-year-old patient, on July 3, 1995. Respondent's prescribed dosage of Chloral Hydrate was appropriate in each case, given the weight (35-40 lbs.) of each patient. There is also a lack of substantial and credible evidence Respondent prescribed an excessive dosage of Valium for either patient.
- h. Respondent prescribed adult doses of Chloral Hydrate to B.H., a three-year-old patient, relative to an August 5, 1995 procedure. There is a lack of substantial and credible evidence Respondent prescribed an excessive dosage of Chloral Hydrate for that patient.
- i. B.H. become agitated during the August 5, 1995 procedure. Respondent thus prescribed an adult dose of Valium for B.H. and instructed her mother to administer that medication one-half hour prior to the next scheduled procedure on August 10, 1995. Based on the substantial and credible evidence presented, that dosage was

excessive, given the age and weight of the patient.

- j. Based on the substantial and credible evidence presented, the patient had an adverse reaction to the Valium on August 10, 1995. Since the procedure on that date was unavoidably delayed, the patient became agitated when the medication was no longer effective throughout the course of the procedure.
- k. Respondent thus instructed the patient's mother to double the Valium dosage prior to the next scheduled procedure on August 17, 1995. Based on the substantial and credible evidence presented, and the reasonable inferences drawn therefrom, Respondent never inquired of the patient's mother whether the patient had any adverse reaction to the Valium relative to the August 10, 1995 procedure. Further, the patient's mother never informed Respondent of that adverse reaction. However, the patient's mother declined to administer a double Valium dosage for the patient in anticipation of the August 17, 1995 procedure.
- l. During Respondent's treatment of B.H., he prescribed Diprolene AF 0.05% cream for her on November 17, 1994, December 30, 1994, April 20, 1995 and June 19, 1995. Respondent also prescribed Temovate 0.05% ointment for her on or about September 29, 1994.
- m. The just-stated medications are not recommended for use in children under 12 years of age. However, those medications are not generally contraindicated under those circumstances. Respondent's prescription of Diprolene and Temovate for B.H. was appropriate, due to the patient's aggravated condition and the need for extensive treatment of that condition. Further, there is no evidence B.H. sustained any actual harm by reason of Respondent's prescriptive use of Diprolene cream and Temovate ointment for that patient.

3. On June 19, 1999 Respondent appeared before the Board with his legal counsel at the Informal Interview and testified that he had not done anything unprofessional and had complied with all the requirements that the State of Utah had imposed on him. Respondent also stated that Utah terminated his probationary order and his license was currently in good standing.

CONCLUSIONS OF LAW

1. This matter is within the jurisdiction of the Arizona Board of Osteopathic Examiners in Medicine and Surgery pursuant to A.R.S. § 32-1801 et seq. and the regulations promulgated thereunder.

2. Respondent's acts in violating A.R.S. § 32-1854, which acts constitute unprofessional conduct, constitute grounds under which the Board may impose disciplinary action against Respondent pursuant to A.R.S. § 32-1855(E).

"Unprofessional conduct" includes the following acts, whether occurring in this state or elsewhere":

(6) Engaging in the practice of medicine in a manner that harms or may harm a patient or that the Board determines falls below the community standard.

(19) Any conduct or practice contrary to recognized standards of ethics of the osteopathic medical profession.

(32) Obtaining a fee by fraud, deceit or misrepresentation.

(40) Any conduct or practice that endangers a patient's or the public's health or may reasonably be expected to do so.

(46) Conduct that the Board determines constitutes gross negligence repeated negligence or negligence that results in harm or death of a patient.

ORDER

Pursuant to the authority vested by the Board the following disciplinary action is taken against Robert Michaud, D.O. as follows:

IT IS HEREBY ORDERED:

1. Dr. Michaud shall be placed on **PROBATION** for a period of one (1) year and ordered to comply with the following terms and conditions of probation:

Commencing from the date of issuance of this Order, Dr. Michaud's license to practice shall be **SUSPENDED** for a period not to exceed six (6) months. Respondent may request, in writing, that the Board terminate the suspension of his osteopathic medical license after completion of the continuing medical education requirements listed below.

Dr. Michaud shall obtain a minimum of fifteen (15) hours of **CONTINUING MEDICAL EDUCATION** credit, ten (10) hours in the area of medical ethics, five (5) hours in the area of application of sterile techniques and infectious diseases. Respondent shall submit to the Board's Executive Director documentation for the Board's approval of the continuing education courses prior to participation in these programs. Respondent shall submit to the Executive Director documentation confirming his attendance and completion of the education program approved by the Board; and, this requirement for continuing medical education shall be in addition to the minimum statutory requirement for renewal of Board license as specified at A.R.S. § 32-1825(B).

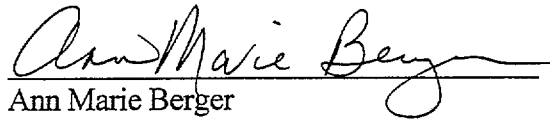
2. Failure to comply with the terms of this Order shall constitute an act of unprofessional conduct in accordance with A.R.S. §32-1854.26 "Violation of a formal order, probation or a stipulation issued by the board under this chapter."

3. Dr. Michaud shall provide a copy of this Order and any subsequent Orders to all facilities where he is currently or in the future will be employed as a physician and/or has privileges to engage in the practice of medicine until the expiration of this Order.

4. In the event Dr. Michaud ceases to reside in the State of Arizona, he shall give written notice to the Board of his new residence address within (20) days of moving; and, the terms and duration of probation shall be stayed until Respondent returns to Arizona.

ENTERED and effective this 9th day of July, 1999.

ARIZONA BOARD OF OSTEOPATHIC
EXAMINERS IN MEDICINE AND SURGERY


Ann Marie Berger

Executive Director

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